

REMARKS

In an Office Action mailed September 22, 2005, the Examiner rejected claims 15-18, 28-30, 36 and 37 under 35 USC 102 as being anticipated by USP 6,056,732 to Fujioka and claim 20-37 and 51-54 as being anticipated or made obvious over U.S. Patent No. 5,531,731 to Brusky.

Applicants gratefully acknowledge the courtesy of the Examiner in conducting a telephone interview with the undersigned attorney on January 12, 2006. During the interview, the parties discussed claims 15, 20 and 28 in view of Fujioka and Brusky. The Examiner agreed that proposed claim amendments, as set forth above, would distinguish Fujioka and Brusky.

Claims 15 and 28:

At the outset, Applicants note that claim 28 recites a “fastening member comprising a *unitary carrier member* defining at least two independently moveable and *integrally formed tab members* extending laterally inward in the same direction from the same one of said side edges of said body panel and an engagement portion disposed on each of said tab members.” Accordingly, claim 28, and claims 29-37 depending therefrom, distinguish over Brusky for the same reason that claim 15² distinguished over Brusky, as explained in the prior amendment filed June 21, 2005.

During the above-referenced interview, Applicants’ attorney explained that Brusky discloses three *separate* fastening members 26, each one having a tab member. There is no disclosure or suggestion in Brusky to make a unitary fastening member, or carrier member thereof, having integrally formed but independently moveable tab members. Applicants further note that the front and rear body panels of Brusky do not define or otherwise form the fastening member. In particular, the tab members are not integrally formed with either body panel. During the interview, the Examiner agreed that claim 28 distinguished over Brusky.

² Applicants have amended claim 15 to recite “unitary” fastening members, instead of a “single” fastening member to improve the clarity and form thereof.

In addition, claim 15 now recites that the “each of said fastening members comprises *a terminal edge opposite said tab members*, wherein each of said fastening members is *non-integral with and formed separately from said front and rear body panels*, and wherein each of said fastening members comprises *a portion positioned between said terminal edge and said tab members fixedly secured to at least one of said front and rear body panels*.” Similarly, claim 28 recites that the “carrier member comprises a terminal edge opposite said tab members, wherein said carrier member is *non-integral with and formed separately from said body panel*, and wherein said carrier member comprises *a portion positioned between said terminal edge and said tab members fixedly secured to said body panel*.”

As explained by the Examiner during the above-referenced interview, the Examiner applied the flaps 15b of Fujioka as the fastening member having two tab members. As shown in FIGS. 1 and 2 (see Office Action at 2), however, the flaps 15b are integral with the diaper chassis, not separate therefrom.³ For at least these reasons, claims 15 and 28, and the claims depending therefrom, are patentable over Fujioka and notice to that effect is earnestly solicited.

Claim 20:

The Examiner rejected claim 20 as being anticipated by Brusky, asserting that the recitation of the seam being formed separately from the fastening member was merely a product by process limitation. While Applicants respectfully disagree, and contend that the language provided a structural relationship, Applicants have amended claim 20 to clarify the relationship between the seam and the attachment locations of the engagement portions. In particular, claim 20 now recites “a rear body panel comprising opposite side edges each having a length fixedly secured to corresponding ones of said side edges of said front body panel along opposite seams

³ Applicants note that Fujioka discloses that the flaps may be formed from another fabric (Col. 5, lines 19-28), but there is no disclosure that such a fabric would have the recited terminal edges or spatial relationship therebetween.

each having a length, said *seams each laterally spaced from said pairs of attachment locations.*”

In this way, claim 20 recites that the front and rear body panels are fixedly secured to each other along a pair of opposite seams, and further that the engagement portions “independently releasably and refastenably [engage] said front body panel at a pair of attachment locations,” which are “laterally spaced” from the seams.

In contrast, Brusky does not disclose in any way a front and rear body panel fixedly secured to each other along a “seam,” which is laterally spaced from the attachment location of the fastening members. Rather, the only connection between the side edges of the front and rear body panels of Brusky is made by way of the fastening members, which connection is releasable. Indeed, the “seam (56)” cited by the Examiner (Office Action at 4) is an interface region between an exterior and interior tape, not a fixed connection between front and rear body panels. For at least these reasons, claim 20 and the claims depending therefrom are allowable over Brusky and notice to that effect is earnestly solicited.

Claims 51-54:

Claims 51 and 52 have been rewritten in independent form, and both recite that the “fastening member is fixedly secured to said body panel at a location proximate said one of said side edges and wherein said at least two independently moveable tab members each have a free edge *positioned laterally inward from said location and said one of said side edges of said body panel.*” In contrast, Brusky discloses that the *free edge* extends *outwardly* from the side edge of the body panel to which it is attached (see FIGS. 1, 2 and 5). Applicants note that in the storage position (FIGS. 2, 3, 4 and 6), the fasteners do not releasably engage the body panel, but rather the interior tape member 48 of the fastener itself (Col. 4, lines 17-30, Col. 5, lines 23-26, 52-54). For at least these reasons, claims 51 and 52 and the claims depending therefrom are allowable over Brusky and notice to that effect is earnestly solicited.

In addition, Applicants have amended claims 51 and 52 to recite “a *unitary* fastening member comprising a carrier member defining at least two independently moveable tab members.” Accordingly, those claims also are patentable over Brusky for the same reasons as set forth with respect to claim 15.

New claims 53 and 54 depend from claims 51 and 52 and further define over Brusky. For example, even in the storage position, the fastener members of Brusky releasably engage a *bodyside* surface of the interior tape member 48.

Accordingly, claims 51-54 are patentable over Brusky and notice to that effect is earnestly solicited.

New claims 55 and 56:

New claims 55 and 56 recite that the “offset tab members” of the “fastening members form a valley therebetween, wherein a shape of said valley is complimentary to and mates with a shape of each of said tab members.” In contrast, as shown in Fujioka (FIG. 2A), the valley formed between offset tab members is not the same shape as the tab members themselves. Rather, the tabs have rounded corners and are shorter than the valley, which has sharp corners and is longer than the either of the tabs. Accordingly, claims 55 and 56 are patentable over Fujioka for this additional reason.

Conclusion:

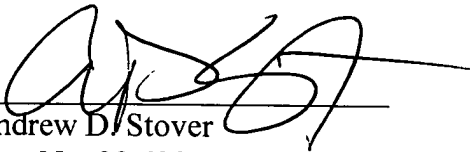
For all of these reasons, Applicants submit that the claims are allowable over Brusky and Fujioka and notice to that effect is earnestly solicited. A check in the amount of \$100 is enclosed for the extra claim fee. Applicants hereby authorize the Commissioner to charge payment of any other fees associated with this communication, as deemed appropriate, to Deposit Account No. 23-1925.

If for any reason this application is not considered to be in condition for allowance and another interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

Respectfully Submitted,

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